



2. Civil Application No 4278 of 1996

GOVERNMENT PLEADER for Petitioner

MR PV HATHI for Respondents No. 1 & 2

MR KS JHAVERI for Respondent No. 3

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/12/96

ORAL JUDGEMENT

1. While admitting this Second Appeal under Section 100 of the Code of Civil Procedure, the learned Single Judge has unfortunately failed to frame the substantial questions of law which are involved and which may arise for consideration of the Court in this Second Appeal. The state of Gujarat which has preferred the Second Appeal has, in fact, framed substantial questions of law which are required to be framed and tried by this Court as substantial questions of law involved in this Second Appeal and the said questions are formulated by the State of Gujarat. In my opinion the question of jurisdiction of the Civil Court to decide about the validity or otherwise of Section 6 Notification does arise in the Second Appeal. Out of the above, issues No. 4 and 5 are framed by this Court as issues involving substantial questions of law which are required to be considered and decided by this Court.

(4) Whether the suit is maintainable at law in the present form?

(5) Whether the Hon'ble Court has jurisdiction to try and decide the suit?

2. In fact the aforesaid substantial questions of law are involved in the Second Appeal which are required to be decided by this Court while deciding the legality and validity of the judgment and decree passed by the Assistant Judge, Bhavnagar in Regular Civil Appeal No. 21 of 1988 whereby the learned Judge has allowed the Appeal and set aside the judgment passed by the Civil Judge (Senior Division), Bhavnagar in Spl. Civil Suit No. 100 of 1992. The lower appellate court has gone to the extent of decreeing the suit by declaring that Notification issued under Section 6 of the Land

Acquisition Act dated 30th May, 1978 is null and void and pursuant to such declaration it was also pleased to grant permanent injunction restraining the defendants from taking possession of the suit land on the strength of the Notification issued under Section 6.

3. The matter is no longer res integra and need not require further examination at the hands of this Court in view of the direct decision of the Supreme Court in the case of STATE OF BIHAR v. DHIRENDRA KUMAR reported in AIR 1995 SC 1955. It is in this decision that the Supreme Court was called upon to decide the question as to whether under Section-9 of the Civil Procedure Code Civil Court has jurisdiction, and if yes, to what extent the Civil Court could decide upon the validity of the Notification issued under Section 4 and Section 6 of the Land Acquisition Act. The Hon'ble Supreme Court in the aforesaid decision after considering the provision of the law found that the Civil Court has no jurisdiction to decide upon the validity or other wise of Notification issued under Sections 4 and 6 by the competent authority. The observations of the Supreme Court in this behalf in the aforesaid case are binding on this Court and they are worth quoting. The said observations are as under :

"We are, therefore, inclined to think, as presently, advised, that by necessary implication the power of the civil Court to take cognizance of the case under S.9 of C.P.C. stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, and declaration under S.6 except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction."

4. In view of the aforesaid binding observations of the Supreme Court in the recently delivered judgement, in my opinion, the lower appellate court was not right in exercising the jurisdiction and in declaring Section 6 Notification as null and void inasmuch as the Civil Court has no jurisdiction to decide the same as declared by the Hon'ble the Supreme Court of India in the context of Section 9 of the Civil Procedure Code. It is also observed by the Supreme Court of India that the

appropriate remedy for the party is a petition under Article 226 of the Constitution of India and, therefore, it is not a case where the party has no remedy to redress his grievances.

5. In view of the aforesaid binding decision of the Supreme Court, the judgment and decree passed by the lower appellate court are thoroughly unsustainable and are required to be quashed and set aside and is hereby quashed and set aside and the judgment and decree passed by the trial court are confirmed. It is further declared that the Civil Court has no jurisdiction to decide the validity or otherwise of Section 6 Notification issued under the Land Acquisition Act and, therefore, the declaration issued by the lower appellate court is quashed and set aside.

6. In the result, the Second Appeal succeeds and the judgment and decree passed by the lower appellate court are hereby quashed and set aside and the judgment and decree passed by the trial court are confirmed.

8. In order to enable the respondents No. 1 and 2 original plaintiffs to have further recourse to law against the judgment and decree, four weeks time is granted from today, during which the effect of the judgment and order of this court shall be stayed.

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